

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
YVES SAINT LAURENT PARFUMS, S.A., : 07-CV-3214 (LBS)
et al., :
:
Plaintiffs, : October 22, 2007
:
v. : 500 Pearl Street
:
COSTCO WHOLESALE CORPORATION, : New York, New York
:
Defendant. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE HENRY B. PITMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: LOUIS SHERMAN EDERER, ESQ.
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New York, New York 10022

For the Defendant: JAMES WILSON DABNEY, ESQ.
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Proceedings recorded by electronic sound recording,
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1 THE CLERK: Yves Saint Laurent v. Costco. Counsel,
2 please state your names for the record.

3 MR. EDERER: Louis Ederer for Arnold & Porter for the
4 plaintiffs.

5 MR. DABNEY: James Wilson Dabney and Darcy Goddard
6 for the defendant.

7 THE COURT: All right. Good afternoon.

8 Thank you for your patience. Judge Sand called me
9 this morning and asked me to try to have a conference as soon
10 as possible. He's picking a jury in another matter and was
11 unable to do it for that reason.

12 There are two issues raised in the correspondence of
13 October 19th and October 22nd. I guess the first is let's,
14 first, talk about the 30(b)(6) deposition. Were there two
15 30(b)(6) notices or one 30(b)(6) notice? Why don't you tell me
16 what the chronology is.

17 MR. DABNEY: Your Honor, the chronology very simply
18 is that in September we attempted to get the plaintiff to tell
19 us how it had gone about complying with the document requests,
20 what search terms that it used and so on. We did not receive
21 any information at all on that subject so we served a Rule
22 30(b)(6) deposition notice that was returnable originally on
23 October 2nd.

24 THE COURT: That was served when?

25 MR. DABNEY: That was served in mid-September as I

1 recall. Then we had the hearing before Your Honor and we had
2 only until October 2nd to serve our Rule 72 objections to the
3 order with regard supplier data and so we told opposing counsel
4 that we were going to continue the deposition to a subsequent
5 date because we couldn't do both on the same date. Then on
6 October 3rd we renoticed the deposition for last Friday, the
7 19th, it was the exact same deposition notice.

8 THE COURT: Okay. At some point did Mr. Ederer call
9 you and articulate objections to this mid-September notice?

10 MR. DABNEY: The only comment I can ever recall Mr.
11 Ederer making was as we were walking out of Your Honor's
12 courtroom he made a comment about why I was noticing up a
13 deposition with regard to their designee but I mean it was a
14 comment that lasted about five seconds and there was nothing
15 like the kind of discussion and legal argument that's presented
16 here in this letter and I mean we -- I don't know what --
17 particularly given we have repeatedly requested the plaintiff,
18 we originally wanted to work out mutually agreed protocols for
19 electronic document searches and we got no cooperation with
20 that, then when they unilaterally produced documents without
21 telling us how they had done it. We wrote them, I can provide
22 the Court with repeated correspondence in which we asked us
23 tell us the search terms you used and tell us the names and
24 locations of the computers you searched and the consistent
25 response was nothing. They wouldn't tell us anything. So we

1 felt we had no choice but to serve a deposition notice which
2 simply would call upon the plaintiff to tell us what they would
3 not tell us in correspondence; just produce a witness that
4 tells us where you looked and how you looked and what search
5 terms you looked at. It doesn't seem to me that there was
6 anything the slightest bit controversial or unusual about it
7 and in fact there hasn't really been until this letter I
8 received this morning. This is the first articulation of an
9 explanation as to why they felt that they could just not show
10 up for the deposition.

11 THE COURT: Was there any communication between you
12 and Mr. Ederer concerning the deposition scheduled for the 19th
13 after you served the notice on October 3rd? After you served
14 the notice on October 3rd did he ever call you and voice
15 objection to the notice?

16 MR. DABNEY: No.

17 THE COURT: Okay. All right. Anything else you want
18 to tell me about the deposition that I haven't given you a
19 chance to tell me?

20 MR. DABNEY: My associate is reminding me is that's
21 not pertinent to our deposition but during the week of October
22 3rd we had notified them that we would make our witnesses
23 available and they declined to go forward with our depositions
24 for reasons that I guess they felt they wanted to have more
25 document production before they went forward with ours. But as

1 far as our attempt to get them to tell us how they produced
2 documents to us there was absolutely no communication; letter,
3 e-mail, nothing from between October 3rd to October 19th.

4 THE COURT: All right. Mr. Ederer, did you ever tell
5 Mr. Dabney why you weren't going to be showing up for the
6 deposition?

7 MR. EDERER: No, Your Honor.

8 THE COURT: Did you ever tell him after the October
9 3rd notice that you weren't going to be complying with the
10 notice of deposition?

11 MR. EDERER: Yes, Your Honor.

12 THE COURT: What did you tell him?

13 MR. EDERER: We had a conversation on the telephone
14 about whether or not we were going to go forward with my
15 depositions that I noticed.

16 THE COURT: When was this conversation?

17 MR. EDERER: It was around October 3rd, Your Honor.

18 THE COURT: Go ahead.

19 MR. EDERER: In the course of that conversation I
20 told Mr. Dabney, first, that I wasn't prepared to proceed with
21 my depositions until the Court determined (a) the pending
22 dispute with respect to supplier documents which Your Honor had
23 heard and decided and which were then the subject of objections
24 and (b) the issue of case management scheduling, when that was
25 going to be determined. As you know, the case management

1 schedule has now been extended by ninety days.

2 THE COURT: Yes.

3 MR. EDERER: I then told Mr. Dabney also that with
4 respect to the deposition notice that he had served that I
5 wasn't prepared to bring a witness from Paris to testify -- and
6 by the way, he did not notice my New York based client for this
7 deposition, only my Paris based client -- and I specifically
8 told him I was not planning to bring my Paris based client to
9 New York for a 30(b)(6) deposition about these topics, that we
10 were going to have one 30(b)(6) deposition and not two and I
11 also have compiled at least four letters that I had sent in
12 September and October to opposing counsel explaining what we
13 did in our search for electronic documents and regular
14 documents. So nothing that you just heard from Mr. Dabney is
15 true, Your Honor. We had a direct, specific discussion about
16 this and I also have submitted several letters indicating what
17 it is we've done to search for documents.

18 THE COURT: Did this October 3rd conversation take
19 place, Mr. Dabney?

20 MR. DABNEY: I have absolutely no recollection of
21 that and I'm very surprised to hear it to state it here to Your
22 Honor. I mean I don't know what to say about it. October 3rd
23 was the day after we filed our Rule 72 objections and I mean I
24 don't know what to say about it. We would never have prepared
25 to go forward with this deposition but --

1 MR. EDERER: Your Honor, may I ask you to ask Mr.
2 Dabney if he remembers if I told him that I was not bringing a
3 witness from Paris to testify about these topics? I
4 specifically told him that.

5 THE COURT: Well, I don't know, should we have an
6 evidentiary hearing? You guys want to testify? Be subject to
7 cross-exam?

8 MR. DABNEY: Your Honor, I would be happy to do that
9 but the issue at the moment is first of all this plaintiff
10 wouldn't need to bring somebody from Paris, they can designate
11 anybody they want to give evidence on the part of the
12 corporation, number one, number two, it's well-established that
13 a corporation that brings a suit in the District can't refuse
14 to appear for deposition in the District and we have reason to
15 want to know what their documents are before taking substantive
16 depositions on other topics so, you know, if I were in the
17 process of trying to expand drastically the scope of this
18 lawsuit I would look for reasons to not go forward with
19 depositions myself but regardless of why they didn't show up I
20 haven't yet heard any argument why they shouldn't appear for
21 deposition on the topics in the notice.

22 THE COURT: Well, with respect to the cost for the
23 busted deposition from last Friday it seems to me that the only
24 cost that's really in play is the court reporter's appearance
25 fee. The prep time, I don't think, is recoverable in any event

1 because I think the deposition is appropriate and you would
2 have had to incur the prep time in any event. So I don't think
3 the prep time -- the attorneys' time for preparation is
4 recoverable.

5 What's the appearance fee; \$100.00? It's usually
6 \$100.00 or \$200.00. Isn't that it?

7 MR. DABNEY: It's not that great. Around that.

8 THE COURT: Yes. You know, look, if counsel want to
9 proceed with an evidentiary hearing on the issue where both
10 sides testify and are subject to cross-examination I'm happy to
11 do that or I'll decide it on the papers, the papers that are in
12 front of me right now. What do counsel want to do?

13 MR. EDERER: Your Honor, I'm happy for you to decide
14 on the papers. I would just ask for the opportunity to submit
15 to you the four or five letters that we have given to the other
16 side in which we detailed what we've done to look for discovery
17 materials and then you can decide it.

18 THE COURT: Mr. Dabney?

19 MR. DABNEY: We're happy to proceed on the papers as
20 well and I would respectfully submit -- I mean counsel is free
21 to submit the letters but I believe the deposition is
22 appropriate.

23 THE COURT: Well, I mean with respect to last
24 Friday's deposition the letters establish that the notice was
25 served, there is no paper trail establishing that objections

1 were lodged to the deposition and there was a written advice to
2 Fried, Frank that a witness would not be appearing in response
3 to the 30(b)(6).

4 It appears to me that Fried, Frank is entitled to
5 recover the cost that was unnecessarily incurred as a result of
6 the busted deposition on Friday but I think those costs are
7 limited to the court reporter's appearance fee. As I said, the
8 prep time is something that is not really wasted because the
9 deposition should proceed, not that prep time is going to be
10 ultimately used and not wasted.

11 With respect to whether or not the deposition should
12 proceed, Mr. Ederer, if you want to submit the letters to me
13 that you believe make the 30(b)(6) unnecessary, I'm happy to
14 take a look at them. I mean ordinarily a 30(b)(6) of the type
15 noticed by defendants here is appropriate.

16 You know, look, I'll give you a chance to make your
17 record. If you want to submit to me the letters that you
18 believe make it unnecessary, I'm happy to consider them but
19 ordinarily a 30(b)(6) concerning what was done to produce
20 documents is appropriate.

21 All right. Can you fax me those letters by tomorrow
22 without argument?

23 MR. EDERER: Yes, Your Honor.

24 THE COURT: Okay. Because if you make argument I've
25 got to give Mr. Dabney a chance to respond so just submit the

1 letters.

2 All right. Mr. Dabney, I appreciate that a great
3 many people whose opinions I value highly regard the County of
4 Kings as the center of the known universe but why are you
5 commencing a separate action in Brooklyn?

6 MR. DABNEY: The reason is very simple, Your Honor,
7 the threatened claim that is the subject of the suit has no
8 connection to the claims that are pending here, number one.
9 The nature of the claims that were threatened is fundamentally
10 different than the claim that was originally brought here,
11 number two. The way that a counterfeiting type --

12 THE COURT: Let me ask you this. How many cases
13 where Fried, Frank has a choice between the Southern and
14 Eastern Districts -- and I don't mean this to cast any
15 aspersions on the Eastern District, my question is really just
16 driven by travel time -- how many times when you have a choice
17 between the Southern and Eastern do you commence in the
18 Eastern?

19 MR. DABNEY: The truth of the matter is Costco is 100
20 percent indemnified by a supplier located in the Eastern
21 District of New York so one of Costco's considerations in this
22 case is minimizing the cost to the person that's actually
23 paying for those proceedings which is Quality King.

24 THE COURT: And it's going to be cheaper for them to
25 go to Brooklyn than to come to the Southern District?

1 MR. DABNEY: They're in Ronkonkoma, Your Honor.

2 THE COURT: Yes. Yes.

3 MR. DABNEY: That is their home district and I
4 believe --

5 THE COURT: Right. No, Ronkonkoma is not a district,
6 it's a town. It's the Eastern District. Okay?

7 MR. DABNEY: It is in the Eastern District and it was
8 felt that for all kinds of reasons it was an entirely
9 legitimate and in fact the most convenient location for the
10 subject matter of that case which is going to involve entirely
11 events in the Eastern District; the people who sourced it,
12 supplied it, are paying for it, have been dealing with YSL are
13 located in the Eastern District.

14 THE COURT: Well, there are a lot of cases involving
15 motions for transfer under 1404 between the Southern and
16 Eastern Districts where the motions are routinely rejected out
17 of hand because there's no material difference between the
18 Southern and Eastern Districts and it just seems to have --
19 look, it seems to me to have two Judges tied up in this
20 dispute. It is an inefficient use of the respective clients'
21 resources and an inefficient use of the Court's resources.

22 Now, look, as a technical matter I don't think either
23 or even Judge Sand can do anything with respect to the Eastern
24 District action. I think -- maybe I'm wrong about that -- but
25 I think Mr. Ederer has to make his application to Judge Bianco.

1 I don't think that a Southern District judicial officer can
2 take the case away from an Eastern District judicial officer
3 but, you know, it seems to me to make little sense to be
4 litigating in two separate districts what are not entirely
5 dissimilar disputes.

6 MR. DABNEY: Well, other than the fact that they both
7 arise under the Trademark Act, I would say the similarity ends
8 there. They are supplied by different people. They are
9 completely different kinds of claims; one is a claim that the
10 product is counterfeit in which we have an indemnity, the
11 other, we thought, was a product about packaging or, now, the
12 goods we're selling as to which it's different products,
13 different suppliers, different witnesses, everything. So the
14 time it's going to take -- I mean the draft complaint that they
15 want to file named twenty John Doe defendants and we got
16 Quality King whose nickel this is. So it really is a very
17 different case. We thought we were here on a case in which it
18 was Costco's packaging and Costco was responsible and we
19 thought we were going to have a very short, compact proceeding
20 and that was one thing. This counterfeiting thing is a whole
21 other kettle of fish. Costco has pulled the product from the
22 shelves, there's indemnity involved, it's a completely
23 different kettle of fish. So I can see why the plaintiff might
24 want to try to smoosh the two together to make the one look --
25 you know, to color the Court's view of the one with the other

1 but they really are two entirely discrete disputes and I don't
2 think that the extremely short time frame that we agreed to in
3 a case where we thought all you needed to know to decide the
4 case is to look at the product on the shelf and decide whether
5 or not it's confusing to people can fairly --

6 THE COURT: Well, let me ask you a question. You
7 filed the case in the Eastern District. Do you have a choice
8 between designating Brooklyn or Islip?

9 MR. DABNEY: I don't know whether we have that
10 choice. We designated Brooklyn.

11 THE COURT: Well, is there a reason why you didn't
12 try to Islip if you were concerned about the convenience of a
13 client in Ronkonkoma?

14 MR. DABNEY: My associate tells me we are in Islip.

15 THE COURT: You are in Islip. I thought -- is Judge
16 Bianco in Islip?

17 MR. DABNEY: I was not aware of that.

18 THE COURT: It's assigned to Judge Bianco and
19 Magistrate Judge Orenstein. Are they in Islip?

20 MR. DABNEY: Well, Michael L. Orenstein used to be in
21 Uniondale but, I guess, they've got a new courthouse.

22 THE COURT: I don't know where Judge Bianco is. Is
23 he in Islip?

24 MS. GODDARD: I looked it up this morning, Your
25 Honor, he's in Islip.

1 THE COURT: He is in Islip?

2 MS. GODDARD: Yes.

3 THE COURT: Well, as I said before I think plaintiff
4 has to make its application before Judge Bianco but, well, it
5 seems to me like --

6 MR. DABNEY: Your Honor, from what I understand --

7 THE COURT: It seems odd that a client wants to pay
8 Fried, Frank's attorneys to travel out to Islip as opposed to
9 traveling to Foley Square. I guess, I think the issue is to --
10 the action in Islip is a question for Judge Bianco in the first
11 instance. I don't think any Judge in the Southern -- as I
12 understand the law no Judge here can take that case from the
13 Eastern District. The Eastern District has to make its own
14 decision.

15 I mean, Mr. Ederer, is your understanding different?

16 MR. EDERER: That's correct, Your Honor, and that's
17 what I believe I said in my letter to you but I also said that
18 we've had a motion to amend our pleading in this case pending
19 since October 9th and on October 15th Mr. Dabney wrote to you
20 and said that they would be serving opposition to that motion
21 in due course and then went on to say that if that motion gets
22 granted then he will join in attempting to extend the case
23 management schedule. There's a whole paragraph about what he
24 was going to do with respect to the motion to amend and not
25 once does he say, and we are cooking up a complaint that we're

1 planning to serve in Islip at the same time.

2 THE COURT: Let me ask all counsel to try to focus on
3 generating light and not heat. Okay?

4 MR. EDERER: Sure. Your Honor, I would submit,
5 though, that there's no practical difference between the motion
6 to amend that we filed and if we had filed a separate action
7 here in the Southern District and ask that it be transferred as
8 a related case to Judge Sand and then ask that the cases were
9 consolidated and I think that we have a right to have our
10 motion to amend decided and I think it's a good motion, a valid
11 motion for the reasons in our application.

12 THE COURT: And that was served on the 9th?

13 MR. EDERER: Yes.

14 THE COURT: So the opposition is due tomorrow? The
15 23rd?

16 MR. DABNEY: Due the 24th. We're going to file on
17 Wednesday.

18 THE COURT: Is it due tomorrow or the 24th? Isn't
19 due in ten days? Ten business days?

20 MR. DABNEY: I believe it's due on the 24th. There
21 was an intervening holiday.

22 THE COURT: Fair enough. You're right.

23 Well, look, do you know what the appearance fee was
24 for Friday's deposition?

25 MR. DABNEY: I could find that out. I believe Your

1 Honor is correct that --

2 THE COURT: Usually it's about \$100.00, something in
3 that neighborhood.

4 MR. DABNEY: I think Your Honor is --

5 THE COURT: Do you want to settle on \$100.00 or do
6 you want to spend more time -- drafting the correspondence is
7 going to chew up more time probably than the differential --

8 MR. DABNEY: I think, actually, it's more like
9 \$150.00. I'll take \$150.00.

10 THE COURT: Any objection to \$150.00 or you want to
11 spend \$500.00 litigating over whether it's \$100.00 or \$150.00?
12 Mr. Ederer?

13 MR. EDERER: Well, my objection is to the award, Your
14 Honor, not to the amount. I clearly had a conversation with
15 Mr. Dabney about this and he clearly understood what I was
16 talking about.

17 THE COURT: All right. I'm deciding it on the paper
18 trail. I'm not --

19 MR. EDERER: I understand.

20 THE COURT: -- making credibility findings with
21 respect to the individuals before me. Okay? I want to make
22 that clear. I'm not crediting one side over the other, I'm
23 looking at the paper trail alone.

24 All right. I'm going to direct that within ten days
25 of today the plaintiff remit to defendant \$150.00 representing

1 the appearance fee for last Friday's -- for the deposition that
2 didn't take place and, Mr. Ederer, you're going to fax me the
3 letters purporting to disclose to advise your adversary about
4 how the document production was assembled; correct?

5 MR. EDERER: Correct.

6 THE COURT: Okay. All right.

7 Anything else from either side?

8 MR. DABNEY: Yes, Your Honor, I just would like the
9 record to include a copy of our letter of October 3rd which --

10 THE COURT: Unless you docket it, it's not going to
11 be in the record.

12 MR. DABNEY: Okay. Well, can I -- I mean I can fax
13 it to Your Honor as well.

14 THE COURT: Well, if you fax it to me it won't be
15 docketed.

16 MR. DABNEY: Okay.

17 THE COURT: We're not file clerks. We don't file
18 with the clerk's office. If you want to file, file it with the
19 clerk's office.

20 MR. DABNEY: Okay. Well, I just wanted to have Your
21 Honor see what it was we had specifically asked for and what we
22 didn't get.

23 THE COURT: No, I have your notice of deposition.
24 When you say what you asked for and what you didn't get, what
25 are you referring to?

1 MR. DABNEY: We had written, for example, on the 3rd
2 of October and said, "Please provide a list of all electronic
3 storage media; servers, data bases, back-up tapes, hard drives,
4 e-mail, Blackberries, etc., that have been searched for
5 potentially responsive ESI, (2) a list of all electronic
6 storage media plaintiffs are still searching and a list of all
7 search terms, document custodians and criteria utilized by the
8 plaintiffs when searching for any electronic storage media for
9 potentially responsive ESI." So we had made fairly specific
10 requests that they tell us what they had done and it was
11 because we had not received any response to those requests that
12 we felt the necessity to go forward with a 30(b)(6) deposition.

13 I interpret Your Honor's comments to indicate that
14 ordinarily the kind of deposition we want to take is
15 appropriate and that if we renotice the deposition it should
16 proceed at a mutually convenient date.

17 THE COURT: Well, after I get Mr. Ederer's submission
18 you might not even need to renotice it. I may get Mr. Ederer's
19 submission and decide that you're entitled to the deposition
20 and if that's the case then I'm going to enter a summary order
21 saying that the deposition shall take place on a mutually
22 convenient date no later than X. Okay?

23 MR. DABNEY: Mr. Ederer's letter of today also raises
24 an issue as to the location of the deposition. I believe it
25 clearly is a deposition that should proceed in the Southern

1 District of New York and the plaintiff can put up anybody they
2 want. They don't have to bring someone from Paris if they
3 don't want to.

4 THE COURT: Mr. Ederer, since this is the venue your
5 client has chosen why should the deposition not take place in
6 New York?

7 MR. EDERER: Your Honor, all I was saying was let's
8 have one 30(b)(6) deposition, not two. If I have to bring
9 somebody from Paris --

10 THE COURT: Well, a 30(b)(6) deposition can cover a
11 number of topics which may or may not be related.

12 MR. EDERER: I understand, Your Honor.

13 THE COURT: So I mean sometimes there's nothing --
14 sometimes you need multiple witnesses at 30(b)(6) depositions
15 so the prospect of multiple 30(b)(6) depositions is not an
16 obstacle. I mean it's not a problem. I mean it happens all
17 the time. I mean if you have a 30(b)(6) on document discovery,
18 you could have a 30(b)(6) on liability issues, you could have a
19 30(b)(6) on damages issues and there may be three different
20 witnesses on all three topics. You know, it's not like you're
21 deposing an individual. When you're deposing an individual
22 often times it makes sense to have a single deposition of an
23 individual and that's what the rules contemplate but because a
24 30(b)(6) can cover multiple and unrelated topics I don't know
25 why a 30(b)(6) should be limited to one session or one notice

1 of deposition.

2 MR. EDERER: I understand, Your Honor, but on the
3 other hand if you look at the situation here my client that's
4 located in New York was not noticed and there's a reason for
5 that, they were trying to make it difficult and burdensome
6 because they only noticed the client that's based in Paris. If
7 they want to know under oath what my client in Paris did to
8 look for documents why can't we do it by written
9 interrogatories or something like that? We'll bring a witness
10 here to testify about the substantive aspect of the case and if
11 I could just point out one other thing, Your Honor?

12 THE COURT: The other thing is, you know, be careful
13 about what you ask for because you may get it. There's still a
14 Local Rule that says if a deposition takes place more than 150
15 miles from the courthouse -- well, actually, it's the other
16 way, they'd have to eventually -- strike that. Nevermind.

17 MR. EDERER: I understand what Your Honor is saying.
18 If I could say one more thing?

19 THE COURT: Yes.

20 MR. EDERER: This is a case where my client
21 discovered some goods on sale at Costco. We don't have a lot
22 of documents relating to what they did. We're not sure
23 internally what they did. They've got all those documents and
24 they are required to produce them. We don't have a whole hell
25 of a lot of documents to produce in this case because --

1 THE COURT: Please moderate your language.

2 MR. EDERER: Sorry, Your Honor.

3 Because the only documents we have about this case
4 are what we discovered at Costco and then there are a lot of
5 privilege documents about what to do about what was discovered
6 at Costco. They're asking us to do a system-wide search of
7 everybody in our system to see what documents we have about
8 what went on at Costco and there's only a few people in the
9 company that were involved in the process of deciding to pursue
10 a claim against Costco.

11 THE COURT: I think the issue right now if I
12 understand correctly, really, is just what search you did and
13 not the sufficiency or insufficiency of the search.

14 MR. EDERER: Yes, and in a letter that we gave them
15 dated September 18, 2007 we sent them a three page letter
16 telling them all of the searches that we did.

17 THE COURT: All right. Well, I'll get that letter
18 and if I have questions about whether or not there still is a
19 need for a 30(b)(6) I will submit something or I'll advise Mr.
20 Dabney to submit something explaining that.

21 All right. Anything else from counsel that we should
22 be considering?

23 MR. DABNEY: I can't think of anything else right
24 now, Your Honor. We told Mr. Ederer we'll be supplying the
25 documents Your Honor ordered produced by today or tomorrow.

1 THE COURT: All right. Mr. Ederer, anything else?

2 MR. EDERER: The only other thing I can think of,
3 Your Honor, is that I think we also have a dispute about where
4 counsel's witnesses are going to be produced for deposition.
5 Although, for now we don't have dates for those depositions.
6 So I was hoping I would be able to work something out with Mr.
7 Dabney relating to that.

8 THE COURT: Well, why don't you try to do that. I
9 mean there's a treatise authored by Silberberg, is the lead
10 author, entitled "Civil Practice in the Southern District of
11 New York" which clearly and succinctly sets forth the general
12 rules on the locations of depositions for plaintiffs and
13 defendants.

14 Ordinarily, the default for defendant is the
15 defendant is deposed where he or she resides or works. That's
16 the general rule. If there are reasons to depart from the
17 general rule I'm happy to hear any arguments you want to make
18 but the rules are different for plaintiff and defendant.

19 MR. EDERER: I understand.

20 THE COURT: Okay. All right.

21 MR. DABNEY: Thank you, Judge.

22 THE COURT: Anything else from anybody? Okay.

23 ALL ATTORNEYS: Thank you, Judge.

24 * * * * *

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* * * * *

I certify that the foregoing is a transcript from an
electronic sound recording of the proceedings in the above-
entitled matter.

CARLA NUTTER

Dated: October 24, 2007